

IN THE COURT OF COMMON PLEAS FOR THE STATE OF DELAWARE
IN AND FOR SUSSEX COUNTY

STATE OF DELAWARE

v.

LAWRENCE S. HAMBLIN

Defendant.

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Case No.: 0510021162

Cr.A. No.: S05-10-2242

Date Submitted: March 30, 2006

Date Decided: April 6, 2006

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Pro Se

DECISION ON MOTION TO DISMISS

Lawrence S. Hamblin ("Defendant") has been charged with possession of an animal by a person prohibited in violation of Section 1325(c) of Title 11 of the *Delaware Code*. Just prior to the start of his trial, the Defendant moved to dismiss the charge against him pursuant to Rule 12(b) of the *Criminal Rules Governing the Court of Common Pleas* on the grounds that the State has failed to file a valid charge against him based on the alleged facts of the case. A hearing was held to consider the Defendant's motion. For the reasons that follow, the Defendant's motion to dismiss the charge against him is denied.

FACTS

The State and Defendant have stipulated to the following facts:

1. That in 2002, the Defendant was convicted of one count of misdemeanor cruelty to animals pursuant to 11 *Del. C.* Section 1325(a).
2. That the sentencing order for the Defendant's cruelty to animals conviction states that the Defendant is "[b]arred from owning animals for five years".
3. That a dog lives at the Defendant's residence.¹
4. That the dog is not owned by the Defendant. It is owned by his fiancée, who also lives at his residence.

DECISION

The Defendant has been charged with possession of an animal by a person prohibited in violation of 11 *Del. C.* Section 1325(c). The relevant portion of that statute states that "[a]ny person convicted of a misdemeanor violation of this section shall be prohibited from owning or possessing an animal for five years after said conviction". Although the Defendant admits that he was convicted of a misdemeanor violation of section 1325 ("cruelty to animals") in 2002, he contends that he does not "own" or "possess" any animal as the dog living at his residence is owned by his fiancée. The dog merely lives there with him. Additionally, it is the Defendant's position that any issue concerning the possession of the dog is not relevant to his case as the sentencing order entered against him for his cruelty to animals conviction in 2002 states that he is barred

¹ The Defendant also admitted that his fiancée's cat lives at the residence. However, in the State's Information, he is only charged with possessing a dog.

from “owning” animals for five years. There is no mention of a bar on the “possessing” of any animal.

It is the State’s position that although it concedes that the Defendant does not own any animals, he is also barred from possessing animals under section 1325(c) of Title 11 of the *Delaware Code*. It is a statutory prohibition to possessing an animal. It does not matter that the sentencing order against him does not mention it. Furthermore, it is the State’s position that the mere fact that a dog is living with the Defendant is enough to prove that he is guilty beyond a reasonable doubt of possessing an animal by a person prohibited.

a. Prohibition Against Possessing An Animal

Section 1325(c) of Title 11 of the *Delaware Code* is clear. Any person convicted of a section 1325 misdemeanor crime of cruelty to animals is prohibited from owning “or possessing” any animal for five years after the conviction. This prohibition is statutory. It does not matter that it was not listed in a sentencing order. Since the Defendant was convicted of misdemeanor cruelty to animals in 2002, he is prohibited from possessing any animal until sometime in 2007.

b. Definition of Possessing of Animals

The key issue for this case is whether the Defendant is guilty of “possessing” the dog living at his residence. Unfortunately, the word “possessing” is not defined in the *Delaware Code* for section 1325(c) purposes and the court did not locate any Delaware case law providing a definition for such purposes.

A court's duty in construing a statute is to give effect to the intent of the legislature as clearly expressed in the language of the statute. *Giuricich v. Emtrol Corp.*, 449 A.2d 232, 238 (Del. 1982). Words not defined in a statute should be given their ordinary and common meaning. *Coastal Barge Corp. v. Coastal Zone Indus. Control Bd.*, 492 A.2d 1242, 1245 (Del. 1985). To ascertain the meaning of words in a statute the court should consider the context and setting thereof, as well as dictionary definitions of words or expressions used therein. *Hutton v. Phillips*, 70 A.2d 15, 17 (Del. 1950). Applying these principles of law to the instant case supports the conclusion that the possession of an animal involves more than living at a residence with an animal that is owned by another.

Black's Law Dictionary, 1183 (Bryan A. Garner ed., 7th ed., West 1999) defines "possession" as follows:

1. The fact of having or holding property in one's power; the exercise of dominion over property.
 2. The right under which one may exercise control over something to the exclusion of all others; the continuing exercise of a claim to the exclusive use of a material object.
 3. Something that a person owns or controls;
- PROPERTY.

Additionally, there is case law in Delaware concerning the definition of the word "possession" with respect to other areas of Delaware's criminal code, especially with respect to drug cases, stolen property cases and cases dealing with the possession of a deadly weapon during the commission of a felony or by a person prohibited. See *Mack v. State*, 312 A.2d 319 (Del. 1973) (discussing the definition of "possession" for several types of criminal offenses). Although that case law is not right on point, I am persuaded

that the general “dominion, control and authority” definition of “possession” is the one most applicable to this case.

In this case, it is alleged that the Defendant has a dog owned by his fiancée living with him and her at their residence. This mere fact is not enough to show that he has any actual dominion, control and authority over the dog. However, it is possible that such a relationship could be proven by the State at a trial for this case. Therefore, the Defendant’s motion to dismiss the charge against him based on the allegation that the State cannot prove that he is guilty beyond a reasonable doubt of possessing an animal in violation of 11 *Del. C.* Section 1325(c) is denied.

CONCLUSION

Although the mere fact that the Defendant has a dog owned by another living with him at their residence is not enough to show that he “possessed” the animal in violation of 11 *Del. C.* §1325(c) (“possession of an animal by a person prohibited”), it is possible that such a relationship could be proven by the State at a trial for this case. Therefore, the Defendant’s motion to dismiss the charge against him based on the allegation that the State cannot prove it beyond a reasonable doubt is **DENIED**.

IT IS SO ORDERED THIS 6TH DAY OF APRIL, 2006.

CHARLES W. WELCH
JUDGE